



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE
STATE OF CALIFORNIA

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Application of Southern California Edison)
Company (U 338-E) for Order Approving)
Settlement Agreement Between Southern)
California Edison Company and SGF, Ltd.)
_____)

Application No. 04-07-041
(Filed July 26, 2004)

MOTION OF SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E) TO
EXTEND PROTECTIVE ORDER

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Dated: July 28, 2006

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE
STATE OF CALIFORNIA**

Application of Southern California Edison)	
Company (U 338-E) for Order Approving)	Application No. 04-07-041
Proposed Settlement Agreement Between)	(Filed July 26, 2004)
Southern California Edison Company and SGF,)	
Ltd.)	
_____)	

**MOTION OF SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E) TO EXTEND
PROTECTIVE ORDER**

Pursuant to Rule 45 of the California Public Utilities Commission’s (the “Commission”) Rules of Practice and Procedure, Southern California Edison Company (“SCE”) hereby requests an extension of a protective order previously granted in this proceeding.

I.

INTRODUCTION

On July 26, 2004, SCE filed the above-captioned application (“Application”) seeking approval of a settlement agreement between SCE and qualifying facility (“QF”), SGF, Ltd. (“SGF”). The settlement agreement concerned a lawsuit brought by SGF against SCE arising from a dispute from a power purchase agreement. On the same date of the application filing, SCE also filed a motion for a protective order seeking confidential treatment of material found in the settlement agreement and the accompanying Application and Exhibits (the “Confidential Information”).

On August 30, 2004, the Administrative Law Judge (“ALJ”) granted SCE’s request for a protective order and confidential treatment for a period of two years.¹ The ALJ also noted that if SCE believes further protection of the confidential settlement information will be needed after two years, SCE must file a motion for such relief no later than 30 days before the expiration of the protective order. The protective order, based on the Confidential Information, is set to expire on August 30, 2006. Thus, SCE now files this motion for extension of the protective order on the basis that the Confidential Information remains market sensitive and would place SCE at a competitive disadvantage if it were released to other QF generators.

II.

DISCUSSION

A. Legal Authority

D. 06-06-066 provides that a party seeking a protective order must “cite the legal basis for confidential protection, along with facts showing the consequence of release.” In addition, the party must demonstrate that other methods such as redaction are “inadequate to protect the data.”²

Public Utilities Code Section 454.5(g), requires the Commission to maintain the confidentiality of “market sensitive information.” It provides:

The commission shall adopt appropriate procedures to ensure the confidentiality of any market sensitive information submitted in an electrical corporation’s proposed procurement plan or resulting from or related to its approved procurement plan, including, but not limited to, proposed or executed power purchase agreements, data request responses, or consultant reports, or any combination, provided that the Office of Ratepayer Advocates and other consumer groups that are nonmarket participants shall be provided

¹ On October 28, 2004, the Commission approved SCE’s settlement agreement with SGF in Decision (“D.”) 04-10-022.

² D.06-06-066 at 81.

access to this information under confidentiality procedures authorized by the commission.³

General Order 66-C also requires the Commission to protect confidential information that would place a utility at an “unfair business disadvantage” if it were publicly disclosed. It categorizes as information that is “not open to public inspection,” those “[r]eports, records, and information requested or required by the Commission which, if revealed, would place the regulated company at an unfair business disadvantage.”⁴ Furthermore, Public Utilities Code Section 583 provides protection from disclosure of confidential information furnished to the Commission by a utility.⁵

SCE now seeks an extension of the protective order originally issued in this proceeding in order to maintain the confidentiality of market sensitive information that is protected under Pub. Util. Code Sections 454.5(g) and 583 and General Order 66-C. Specifically, SCE seeks the continued protection of certain information related to the settlement agreement entered into between SCE and SGF found in SCE’s Application and Exhibits and documents related thereto.

B. The Dispute Between SCE And SGF

The dispute between SCE and SGF arose from an Interim Standard Offer Number 4 (“ISO4”) contract. Under an ISO4, SGF may choose whether to supply “firm” or “as-available” capacity. SGF chose to provide “firm” capacity, which provides for significantly higher capacity payments and subjects SGF to annual “Capacity Demonstration Tests” to be conducted by SCE. If SGF fails to demonstrate their contractually stipulated Contract Capacity, SCE may derate

³ Cal. Pub. Util. Code § 454.5(g) (*emphasis added*).

⁴ General Order 66-C, § 2.2(b).

⁵ Section 583 of the Public Utilities Code provides:

“No information furnished to the commission by a public utility, or any business which is a subsidiary or affiliate of a public utility, or a corporation which holds a controlling interest in a public utility, except those matters specifically required to be open to public inspection by this part, shall be open to public inspection or made public except on order of the commission, or by the commission or a commissioner in the course of a hearing or proceeding. Any present or former officer or employee of the commission who divulges such information is guilty of a misdemeanor.”

SGF's Contract Capacity level and recover on behalf of its customers any unearned capacity payments. In 2000, SGF failed to demonstrate its Contract Capacity and SCE offset the charged amount against energy and capacity payments otherwise owed to SGF.

SGF, on the other hand, alleged that SCE failed to properly conduct the Capacity Demonstration Test and carry out the deration according to the terms of the contract. On September 18, 2001, SGF filed a Complaint seeking damages and a declaration that SCE's deration of the contract capacity was improper. In addition, SGF alleged SCE committed unfair business practices and unlawful, unfair, or fraudulent business acts in procuring electrical generating capacity from wind producers without paying adequate compensation.

Due to the uncertainty regarding how a court would resolve the above dispute, a settlement was negotiated that appropriately reflected the relative risks and costs of litigation. The settlement agreement demonstrated the reasonableness of the amount by introducing expert witness testimony showing that the settlement produced a result falling within the range of possible outcomes. In addition, the settlement agreement presented a comparison of payment schedules for alternative scenarios to further demonstrate the reasonableness of the settlement amount.

C. The Protective Order Must Be Extended Because The Settlement Agreement Is Market Sensitive Information

The settlement agreement between SCE and SGF covered by the original protective order relates to the terms and conditions found in standard offer QF power purchase contracts, known as ISO4 contracts. SCE is currently a signatory to approximately 94 active ISO4 contracts. These ISO4 contracts contain the same terms and conditions that formed the basis of the dispute between SCE and SGF. Thus, SCE's legal and strategy position and the settlement terms remain market sensitive in the event legal action is initiated in connection with SCE's remaining ISO4 contracts, because disclosure of this information to other QFs would place SCE at a competitive disadvantage in attempting to settle similar claims. Essentially, the terms of the settlement

would serve as a floor for all future negotiations. This floor will result in less favorable settlements for SCE's customers without added value. In addition, public disclosure may also disadvantage SCE in potential litigation by allowing such parties to exploit concessions that SCE provided under the unique circumstances of these particular disputes even though such concessions would not be appropriate in a different context or under different facts. These disadvantages would impair SCE's ability to obtain the best possible settlements on behalf of its customers, and, therefore, must remain confidential.

In addition, no benefit will arise from disclosing the settlement information to other QFs. The settlement was unopposed and has already been approved. The only reason anyone would want access to the settlement information would be for the sole purpose of gaining insight into SCE's litigation strategy and willingness to concede on contract terms. The publicly filed version of the settlement agreement still discloses all pertinent information, and has only redacted portions of the agreement which unfairly reveal competitive information at SCE's expense. Thus, since disclosure of such information fails to produce any justified benefit, the information must remain confidential.

In summary, the Commission previously found that sufficient grounds existed to protect information contained in the settlement agreement. The circumstances upon which the ALJ and the Commission accepted as justifying the issuance of a protective order in 2004 have not changed. Accordingly, the Commission should grant SCE's motion to extend the protective order.

III.

CONCLUSION

For all of the foregoing reasons, SCE respectfully request the Commission to grant SCE's motion to extend protective order to ensure the protection of confidential, market sensitive information related to the settlement agreement entered into by SCE with SGF, including designated portions of the Application and Exhibits and documents related thereto.

Respectfully submitted,

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/s/ William V. Walsh

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Dated: July 28, 2006

(Proposed Ruling)

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE
STATE OF CALIFORNIA**

Application of Southern California Edison Company (U
338-E) for Order Approving Settlement Agreement
Between Southern California Edison Company and SGF,
Ltd.

Application 04-07-041
(Filed July 26, 2004)

**ADMINISTRATIVE LAW JUDGE'S RULING ON MOTION TO EXTEND
PROTECTIVE ORDER BY SOUTHERN CALIFORNIA EDISON COMPANY**

On July 28, 2006, Southern California Edison Company ("SCE") filed a motion requesting an Administrative Law Judge ("ALJ") order to continue to preserve the confidentiality of certain information contained in the above referenced Application, concerning the settlement of a lawsuit arising out of Qualifying Facility ("QF") contract between SCE and SGF, Ltd. SCE requests an order under California Public Utilities Code Sections 454.5(g) and 583 and General Order 66-C to preserve the confidentiality of the designated portions of the Application and Exhibits in its entirety (collectively, "Confidential Material"), and documents related thereto.

This ruling grants SCE's motion. Disclosure of the information which SCE seeks to protect from market participants would place SCE at a competitive disadvantage in negotiating settlements of similar claims with other QFs and thereby impair SCE's ability to obtain the best possible settlements on behalf of its customers, and may cause competitive harm to SCE.

Accordingly, it is ordered as follows:

- The Confidential Material shall be permanently sealed and protected from public disclosure by the Commission's Docket Office, File Room, and all Commission employees and agents who may receive a copy of the Confidential Material and its attachments in the course of their duties;

- The portions of the Reporter's Transcript wherein the Confidential Material is addressed shall be sealed with respect to all parties except SCE and the Commission staff; and
- All additional documentary evidence received in this proceeding which addresses, or is related to, the subject matter of the Confidential Material shall be treated in the same confidential manner as provided for the Confidential Material.

Dated _____, 2006, at San Francisco, California.

Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that, pursuant to the Commission's Rules of Practice and Procedure, I have this day served a true copy of the MOTION OF SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E) TO EXTEND PROTECTIVE ORDER on all parties identified on the attached service list. Service was effected by one or more means indicated below:

Transmitting the copies via e-mail to all parties who have provided an e-mail address. First class mail will be used if electronic service cannot be effectuated.

Executed this 28th day of July 2006, at Rosemead, California.

/s/ Lizette Vidrio

Lizette Vidrio

Case Administrator

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A.04-07-041

Friday, July 28, 2006

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